

**RECEIVED
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DEC 10 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF
JOHN C. ALTMILLER**

I, the undersigned, John C. Altmiller, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about August 2007, I have been retired from the active practice of patent law. My current home address is 1908 Ballycor Drive, Vienna, VA 22182.

2. From about 1986 to July 31, 2007, I served as a partner of Kenyon & Kenyon LLC ("Kenyon") in Kenyon's Washington, DC offices. Prior to that time, I worked in Kenyon's New York office.

3. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. To my recollection, from at least 1995 to about July 2007, I was docketed as a supervising attorney/partner for many patent applications for Toyota. During this time I supervised several associates who assisted me with Toyota prosecution matters, including, Sterlon Mason, Mark H. Neblett, and William E. Curry.

5. It is my understanding that a Continuing Prosecution Application ("CPA") for '641 was filed with the USPTO on March 15, 2000.

6. It is my understanding that a Preliminary Amendment for '641 was filed with the USPTO on March 29, 2000.

7. It is my understanding that a Notice of Allowance and an Issue Fee Transmittal form for '641 was mailed to a prior address of Kenyon's Washington, DC office on April 17, 2000.

8. It is my understanding that an "Issue Fee Transmittal" form is present in the USPTO's file wrapper for '641 and that this form remains blank (uncompleted). The form is stamped "MATCH & RETURN" and further stamped "RECEIVED APR 27 2000 TC 3600 MAIL ROOM."

9. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for '641 was not received by Kenyon & Kenyon, but rather, was returned to the USPTO as undeliverable.

10. I did not know of the Notice of Allowance for '641 until contacted in 2008 by Shawn O'Dowd, who is currently a partner at Kenyon.

11. It is my understanding that a Notice of Abandonment was mailed to a prior address of Kenyon's Washington, DC office on September 13, 2000.

12. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for '641 was not received by Kenyon & Kenyon.

13. I did not know of the Notice of Abandonment for '641 until contacted in 2008 by Shawn W. O'Dowd.

14. According to a document in Kenyon's paper files, I signed a change of correspondence address form for '641 on October 2, 2000, and that this form was stamped as received by the USPTO on October 3, 2000. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 1 to this declaration.

15. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the form was prepared for my signature by Cathy Ryan, a patent secretary at Kenyon who was then tasked with the responsibility of changing addresses for many of the cases then prosecuted by Kenyon. I have no specific recollection relating to this form.

16. According to documents in Kenyon's paper files, two other Kenyon attorneys filed documents with the USPTO relating to the correspondence address and power of attorney for the '641 application. These documents, as well as a communication relating to the filing of the documents, are attached as Exhibit 2 to this declaration. I have no specific recollection relating to these documents or the communication.

17. It is my understanding that the USPTO's paper file for '641 was officially "reported lost in USPTO" on November 27, 2000 ("11/27th [sic]"). Memoranda from Cathy Ryan, dated "1/12/00 [sic]" documenting this November 27th date is attached as Exhibit 3 to this declaration.

18. It is my understanding that I signed a "POWER TO INSPECT AND MAKE COPIES" of the '641 file on February 7, 2001. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 4 to this declaration.

19. It is my understanding that Mark H. Neblett filed a File Reconstruction request which was stamped as received by "Licensing & Review" on March 23, 2001. This document is attached as Exhibit 5 to this declaration.

20. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the USPTO informed us that the file for '641 had been lost, that we filed a request for reconstruction of the '641 file, and then awaited a USPTO response.

21. It is my understanding that an electronic docket entry entitled "PTO lost file-awaiting OA" was entered into Kenyon's electronic docketing system on July 15, 2002." Evidence of the docket entry is attached as Exhibit 6 to this declaration.

22. It is my understanding that I signed a document entitled "STATUS INQUIRY" on September 8, 2003. I have no specific recollection relating to the signing or filing of this document. The document "respectfully request[s] that the Examiner inform Applicants of the status of ['641]." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001." The paper also authorized the Commissioner to "charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600." The paper has Kenyon & Kenyon's 1500 K Street, N.W. address at the bottom of the page. This document is attached as Exhibit 7 to this declaration.

23. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that a review of my pending cases, which revealed the "PTO lost file" entry, prompted the filing of the Status Inquiry of September 8, 2003.

24. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

25. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

26. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding '641, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 9 December 2008


John C. Altmiller

EXHIBIT 1 TO ALTMILLER DECLARATION

Please type a plus sign (+) inside this box → ☐

PTO/SB/122 (11-95)
Approved for use through 6/30/98, OMB 0001-0035
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

CHANGE OF CORRESPONDENCE ADDRESS Application Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	SATO
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Boyle / Yoshida

Please change the Correspondence Address for the above-identified application to:

☒ Customer Number 23838
Type Customer Number here



OR

☐ Firm or
Individual Name

Address

Address

City

Country

Telephone

Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

- ☐ Applicant
- ☐ Assignee of record of the entire interest.
Certificate under 37 CFR 3.73(b) is enclosed.
- ☒ Attorney or agent of record.

Typed or
Printed Name

Signature

Date

John C. Alt Miller
John C. Alt Miller
10/2/00

Duration: This form is estimated to take 0.2 hours to complete. There will vary depending upon the details of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

DEC 10 2008

EXHIBIT 2 TO ALTMILLER DECLARATION

PATENT
Docket No. 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILED : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. Hernandez

Assistant Commissioner for Patents
Washington D.C. 20231

CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller
KENYON & KENYON
1500 K Street, N.W.
Washington, D.C. 20006

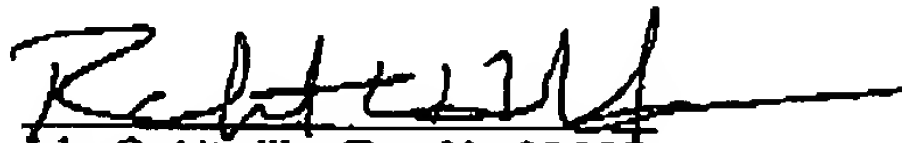
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
(202) 220-4200
(202) 220-4201 (fax)


John C. Altmiller (Reg. No. 25,951)
Robert L. Halls, Jr. (Reg. No. 39,702)

DC01 322791 v 1

DC01 748944 v1



⑦

PATENT
Docket No.: 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :
SERIAL NO. : 08/750641
FILING DATE : December 18, 1998
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks
Washington D.C. 20231

ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Alt Miller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

CUSTOMER NUMBER: 23538

Respectfully submitted,

Date November 6, 2000
Edward W. Greason
Reg. No. 18,918

KENYON & KENYON
One Broadway
New York, NY 10004
(212) 425-7200 (telephone)

DC01 333824 v.1

DC01 748944 v.1

Inserra, Barbara

From: Neblett, Mark
 Sent: Wednesday, November 01, 2000 10:14 AM
 To: JCAKK@ca.com, WESSER, Edward
 Cc: Halls, Robert
 Subject: FW: Toyota 7779223

Julie
/DC

In response to John Atwill's questions, below.

The 1028 Conn. address was the only one in the file (although 1500 K was on correspondence Sirion Mason sent to the PTO in March 2000). Bob Halls fixed the formal address change to 1500 K on Monday.

Mark H. Neblett
 KENYON & KENYON
 1500 K Street, N.W.
 Washington, DC 20005
 (202) 220-4200
 (202) 220-4201 (fax/voice)
 (202) 220-4232 (direct)
 mneblett@kenyon.com

NOTE: The information in this e-mail message is confidential and intended only for the use of the intended recipient. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by e-mail, and destroy the original message. Thank you.

-----Original Message-----
 From: Halls, Robert
 Sent: Wednesday, November 01, 2000 8:20 AM
 To: Neblett, Mark
 Subject: FW: Toyota 7779223

Mark,

I got the following from JCA.

Bob

-----Original Message-----
 From: JCAKK@ca.com [mailto:JCAKK@ca.com]
 Sent: Tuesday, October 31, 2000 12:23 PM
 To: RHalls@kenyon.com
 Subject: Re: Toyota 7779223

Let Mark Neblett know. Was there a DC correspondence address for sure? Also let EWG know.

EXHIBIT 3 TO ALTMILLER DECLARATION

CATHY RYAN
KENYON & KENYON

1800 K STREET, N.W., SUITE 700
WASHINGTON, D.C. 20006-1200
PHONE (202) 739-4200

1/12/00

DIRECT DIAL (202) 739-4200
FAX (202) 739-4200
E-MAIL: cathy@kenyon.com

Conversation w/ Group receptionist
File has been reported lost
in USPTO (11/27/99). The
last known destination
for this file was the
file repository. There
is no record of
anyone ordering this
file. I recommend contacting
the Examiner to see if
they need our file to
rebuild the lost one.

CATHY RYAN
KENYON & KENYON

1100 K STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005-1107
PHONE (202) 278-4300

PROJECT CHAIR (202) 278-4300
FAX (202) 222-4301
E-MAIL: ctyan@kenyonkenyon.com

1/12/01 10:45

left message w/ O.
Hernandez

Power of
Inspection

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res. sent to
off. of
ins. & inv.
1/12/01
called

10:30
left
6:00

EXHIBIT 4 TO ALTMILLER DECLARATION*LAST 1/16/01***PATENT**
Docket No. 77792/23**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO et al.
Serial No. : 08/750,641
Filed : December 16, 1996
For : SCHEDULE SETTING AND PROCESSING SYSTEM
Examiner : O. Hernandez

Assistant Commissioner of Patents
Washington D.C. 20231

POWER TO INSPECT AND MAKE COPIES

SIR:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the above-captioned matter.

Respectfully submitted,

KENYON & KENYON

Date: 2/7/01 2001



John C. Altmiller, Registration No. 25,951
KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201

EXHIBIT 5 TO ALTMILLER DECLARATION

PATENT
Docket No.: 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents
Washington, D.C. 20231

FILE RECONSTRUCTION

SJR:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblott
Reg. No. 42,028

DC01 381128 v 1

DC01 748944 v1

EXHIBIT 6 TO ALTMILLER DECLARATION

IPSScorer
Kenyon & Kenyon

Patent Jacket Data Sheet

B. O'DOWD
DANIEL G. SHANLEY

P25830 USW
Client Ref
Office DC

L. SCHUECKENPFLUG

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars			Parties	
Prosecution Status	Live - Pending		Applicant/Regd.	TOYOTA JIDOSHA KABUSHI
Priority Claimed	8-288290	01-Dec-1994 Japan	Inventor	KOZU, Masahumi
Parent	PCT/JP96/02459	01-Dec-1995 WO	Inventor	MORITA, Itakata
Application	08/750841	01-Dec-1995 US (PCT)	Inventor	SATO, Koji
Filed on		16-Dec-1998	Inventor	YAMASHITA, Masamichi
Publication			Ref/Frame	8367 / 229
Allowed				
Grant Fees Paid				
Grant				
Expiry				
Agent	KENYON N.Y.			
Renewal Particulars				
Renewal Status	Pre-Grant			
Annuitly				
Next Due				
Next Cost				
Cost Remainder				
Comm Date	Communications / Action	Due Date	Last Date	Response Filed
16-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	IDS Due	16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	Preliminary Amendment	16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	Recordal	16-Dec-1998	16-Dec-1998	16-Dec-1998
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC			
14-Mar-1997	Filing Receipt			
16-Mar-1997	IDS - suppl IDS	16-Mar-1997	16-Mar-1997	16-Mar-1997
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS - suppl IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS - suppl IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS - suppl IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS - suppl IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Jun-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Nov-1998	R118 Response to Final Due	23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Nov-1998	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000
	CPA App'n. Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000
	Suppl. Info. Otscl. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003
	File IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed	09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004
08-Aug-2008	Petition Filed	06-Aug-2008	06-Aug-2008	06-Aug-2008
08-Aug-2008	Request Continued Examination	06-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received	29-Feb-2000	29-Feb-2000	
	PTO Intl Re-examining OA	15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Denial		12-Sep-2008	

Updated 01/10/2008 10:03:53 PM Filed 18 Sep 2008

Patent Application No. 08/750841

77702/23

Page 1 of 2

EXHIBIT 7 TO ALTMILLER DECLARATION**PATENT
DOCKET NO.: 7792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT(S): Koji SATO et al
SERIAL NO.: 08/750,641
FILED: December 16, 1996
FOR: SCHEDULE SETTING AND PROCESSING SYSTEM
ART UNIT: 2316 **EXAMINER:** O. Hernandez

**COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450**

STATUS INQUIRY**SIR:**

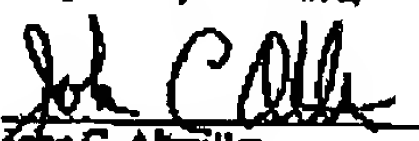
Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this sheet is attached.

Respectfully submitted,

Date: September 8, 2003


John C. Alt Miller
(Reg. No. 25,951)

**KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
Tel: (202) 429-1776
Fax: (202) 429-0796**

The stamp of the Patent Office herein may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.
SERIAL NO.: 09/750,641
FILED: December 16, 1996
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART: 2316
EXAMINER: O. Hernandez

PATENT FILER:

1. Patent Inquiry

ICV/mq

September 8, 2003

